

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Clarence J. Harvey,

Plaintiff,

vs.

Willie Eagleton, Warden; Robin
Chavis, Warden; Argie Graves,
Grievance Coordinator; and
Jason Williamson, Sgt.,

Defendants.

Civil Action No. 2:10-3274-RMG

ORDER

This matter comes before the Court on Defendants' motion for summary judgment. This action was brought *pro se* by Plaintiff, an inmate at Evans Correctional Institution, who alleges by way of a verified complaint that Defendant Williamson "intentionally placed" him in the wrong cell "to be physically assaulted" by another inmate. (Dkt. No. 1 at 3). Plaintiff alleges that the remaining Defendants failed "to take immediate corrective action" after Plaintiff brought the alleged assault to their attention through the grievance process. *Id.* at 4. Defendants moved for summary judgment and Defendants Eagleton and Graves filed affidavits in support of their motion. (Dkt. Nos. 20, 20-14, 20-5). Plaintiff filed a response in opposition to the motion for summary judgment. (Dkt. No. 28).

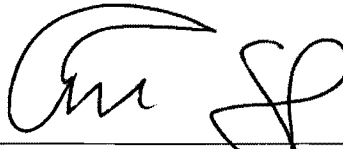
This matter was referred for pretrial handling to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C. The Magistrate Judge recommended that the

claims against Defendants Eagleton, Chavis and Graves be dismissed because the allegations involved only a failure to provide Plaintiff the relief requested in the grievance process. (Dkt. No. 32 at 3-8). The Magistrate Judge recommended that the motion for summary judgment on behalf of Defendant Williamson be denied without prejudice. *Id.* at 8-9. The Magistrate Judge noted that Defendant Williamson had not filed an affidavit and the incident report and medical records submitted by Defendants had not been accompanied by an affidavit and were not otherwise under oath. *Id.* at 8.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection has been made, and may accept, reject or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to her with instructions. 28 U.S.C. § 636(b)(1).

The Court, having reviewed the Report and Recommendation, the record before the Court and the applicable legal authorities, hereby adopts the Report and Recommendation of the Magistrate Judge. Defendants Eagleton, Chavis and Graves motion for summary judgment is hereby **GRANTED**. Defendant Williamson's motion for summary judgment is **DENIED WITHOUT PREJUDICE**.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

December 12, 2011
Charleston, South Carolina